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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

LAURA LEIGH, individually, and WILD
HORSE EDUCATION, a non-profit
corporation,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
INTERIOR, BUREAU OF LAND
MANAGEMENT, TRACY STONE-
MANNING, Director of the Bureau of Land
Management, and JON RABY, Nevada State
Director of the Bureau of Land Management,

Federal Defendants.

CASE NO. 3:23-cv-00568-ART-CSD

**PLAINTIFFS' NOTICE OF MOTION
AND MOTION FOR JUDICIAL
NOTICE; MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT
THEREOF**

PLEASE TAKE NOTICE that upon the accompanying Memorandum of Law,
Declaration of J. Rae Lovko, and exhibits attached thereto, together with all prior pleadings and
proceedings had herein, Plaintiffs hereby move this Court and request that this Court take

1 judicial notice of excerpts from the Merriam Webster dictionary; Notes for 43 CFR Subtit. B,
2 Ch. II, Subch. D, Group 4700; 51 Fed. Reg. 7410, Mar. 3. 1986; 56 Fed. Reg. 786, January 9,
3 1991; 43 C.F.R. §4700 *et seq.* (1985); and 49 Fed. Reg. 49252, Dec. 18, 1984 under Federal Rule
4 of Evidence 201(b). This Request for Judicial Notice is being filed concurrently with and in
5 support of Plaintiffs' Motion for Summary Judgment.

6 Dated: December 13, 2024

7 Respectfully Submitted,

8
9 /s/ Rae Lovko

10 Jennifer Rae Lovko
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MEMORANDUM OF POINTS AND AUTHORITIES

Plaintiffs move this Court to take judicial notice of excerpts from the Merriam Webster dictionary; Notes for 43 CFR Subtit. B, Ch. II, Subch. D, Group 4700; 51 Fed. Reg. 7410, Mar. 3. 1986; 56 Fed. Reg. 786, January 9, 1991; 43 C.F.R. §4700 *et seq.* (1985); and 49 Fed. Reg. 49252, Dec. 18, 1984 under Federal Rule of Evidence 201(b). The Court may take judicial notice of these because they are relevant in establishing Defendants’ mandatory duty to create Herd Management Area Plans (HMAPs) prior to adopting any gather plans.

This Court may take judicial notice of “a fact that is not subject to reasonable dispute because it: (1) is generally known within the trial court’s territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b)(1)-(2). FRE 201 further provides that the Court “may take judicial notice on its own” and “must take judicial notice if a party requests it and the court is supplied with the necessary information.” *Id.* at 201(c)(1)-(2).

Documents which may be considered for judicial notice pursuant to Rule 201 include legislative history documents, federal register documents, and other government documents, including reports of government bodies and records found on government websites. *See Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d 988, 1001 (9th Cir. 2018); *Democratic Nat’l Comm. v. Reagan*, 329 F. Supp. 3d 824, 855 n.12 (D. Ariz. 2018); *Longo v. Seminole Indian Casino-Immokalee*, 813 F.3d 1348, 1349 n.2 (11th Cir. 2016); *Beaver v. Tarsadia Hotels*, 29 F. Supp. 3d 1294, 1320 (S.D. Cal. 2014); *FAS Capital, LLC v. Carr*, 7 F. Supp. 3d 1259, 1266 (N.D. Ga. 2014). Dictionary definitions are also a proper subject for judicial notice. *See Threshold Enters. v. Pressed Juicery, Inc.*, 445 F. Supp. 3d 139, 146 (N.D. Cal. 2020).

A. Excerpts from the Merriam Webster Dictionary

This document contains the dictionary’s definition for “constraint” and “constrain.” The content was downloaded from the online Merriam Webster website. It is being submitted for the purposes of determining the scope of regulations adopted to implement the Wild and Free-

Roaming Horses and Burros Act (WHA). Judicial notice of the definitions is appropriate under Federal Rules of Evidence, Rule 201. *See Threshold Enters.*, 445 F. Supp. 3d at 146.

B. Notes for 43 CFR Subtit. B, Ch. II, Subch. D, Group 4700

This document, downloaded from Lexis, contains notes applicable to 43 C.F.R. §4700 *et seq.*, which regulations were created by BLM to implement the WHA. Judicial notice is being requested as evidence that the current BLM regulations were adopted in 1986, as amended in 1991. The document and these facts can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned. As such, it is the type of document for which judicial notice is appropriate. *See Fed. R. Evid. 201(b)(1)-(2); Khoja*, 899 F.3d at 1001; *Democratic Nat'l Comm.*, 329 F. Supp. 3d at 855 n.12; *Longo*, 813 F.3d at 1349 n.2; *Beaver*, 29 F. Supp. 3d at 1320; *FAS Capital, LLC*, 7 F. Supp. 3d at 1266.

C. 51 Fed. Reg. 7410, March 3, 1986

This document, published in the Federal Register, addresses BLM's final rulemaking for revisions to 43 C.F.R. §4700 *et seq.* As a Federal Register document, judicial notice is appropriate. It is relevant in establishing that the current BLM regulations were adopted in 1986. *See Fed. R. Evid. 201(b)(1)-(2); Khoja*, 899 F.3d at 1001; *Democratic Nat'l Comm.*, 329 F. Supp. 3d at 855 n.12; *Longo*, 813 F.3d at 1349 n.2; *Beaver*, 29 F. Supp. 3d at 1320; *FAS Capital, LLC*, 7 F. Supp. 3d at 1266.

D. 56 Fed. Reg. 786, January 9, 1991

This document, published in the Federal Register, addresses the 1991 amendments to BLM's regulations. As a Federal Register document, judicial notice is appropriate. It is being submitted to clarify that the 1991 amendments did not alter BLM's mandatory duty to create HMAPs. *See Fed. R. Evid. 201(b)(1)-(2); Khoja*, 899 F.3d at 1001; *Democratic Nat'l Comm.*, 329 F. Supp. 3d at 855 n.12; *Longo*, 813 F.3d at 1349 n.2; *Beaver*, 29 F. Supp. 3d at 1320; *FAS Capital, LLC*, 7 F. Supp. 3d at 1266.

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E. 43 C.F.R. §4700 et seq. (1985)

This document contains the BLM regulations as of 1985—prior to adoption of the current regulations. It is a public document for which judicial notice is appropriate. It can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned. It is relevant for purposes of interpreting the current regulations, demonstrating that prior to 1986, the regulations did not provide that HMAs shall be established for the maintenance of wild horse and burro herds, did not contain any language regarding HMAPs, and did not connect any land use or management plans with HMAs. *See* Fed. R. Evid. 201(b)(1)-(2); *Khoja*, 899 F.3d at 1001; *Democratic Nat’l Comm.*, 329 F. Supp. 3d at 855 n.12; *Longo*, 813 F.3d at 1349 n.2; *Beaver*, 29 F. Supp. 3d at 1320; *FAS Capital, LLC*, 7 F. Supp. 3d at 1266.

F. 49 Fed. Reg. 49252, December 18, 1984

This document, published in the Federal Register, is relevant for purposes of interpreting the current BLM regulations. It establishes that in 1984, BLM proposed changes to its regulations, introducing mandatory requirements for HMAs and HMAPs. It is relevant for addressing statutory construction of BLM’s regulations. *See* Fed. R. Evid. 201(b)(1)-(2); *Khoja*, 899 F.3d at 1001; *Democratic Nat’l Comm.*, 329 F. Supp. 3d at 855 n.12; *Longo*, 813 F.3d at 1349 n.2; *Beaver*, 29 F. Supp. 3d at 1320; *FAS Capital, LLC*, 7 F. Supp. 3d at 1266.

For these reasons, Plaintiffs respectfully request this Court to take judicial notice of the documents.

Dated: December 13, 2024

Respectfully Submitted,

/s/ Rae Lovko

Jennifer Rae Lovko

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CERTIFICATE OF SERVICE

I hereby certify that on December 13, 2024, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which caused all parties or counsel of record to be served by electronic means, as more fully reflected on the Notice of Electronic Filing.

/s/ Jessica San Luis
Jessica San Luis